

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

WAL-MART STORES, INC.

Employer

and

Case 12-RC-8484

UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION LOCAL 1625

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The Petitioner involved claims to represent certain employees of the Employer and is a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

---

<sup>1</sup> The parties' post-hearing briefs have been carefully considered.

<sup>2</sup> The parties stipulated that the Employer is a Delaware Corporation with offices and places of business located throughout Florida where it engages in the business of retail merchandising. The facility involved in this proceeding is a store located in Ocala, Florida. During the past 12 months the Employer has derived gross revenues

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit limited to all full-time and regular part-time employees employed in the Employer's meat market, including meat processors and meat sales associates, but excluding a lead meat associate and one employee who recently transferred into the meat department. Contrary to the Petitioner, the Employer contends that the only appropriate unit must either include all store associates employed at its Ocala, Florida store or, alternatively, include all associates who work in the store's "Division 24" which constitutes the meat (department 93), seafood (department 80), deli (department 80), and deli wall (department 97) departments. There are approximately 13 employees in the unit petitioned-for, and a total of 29 employees in "Division 24." The store employs approximately 520 associates, 85 percent of whom are full-time.<sup>4</sup>

The Ocala store is a "supercenter" facility for the Employer that operates 24 hours per day. The store contains general areas of merchandise including hardlines (health and beauty aids, cosmetics, paint, hardware, automotive), homelines (bedding, housewares), softlines, and food (meat, seafood, deli, produce, dairy, grocery, and bakery). The store also contains a pharmacy, garden center, and photo center. The record reflects that the store also contains separately run entities including a bank, travel agency, hair salon, and McDonalds.

The hierarchical structure of the Ocala store includes: Store Manager Lawrence Smith who has overall responsibility for the store's operations and merchandise, Co-manager Larry

---

in excess of \$500,000 and purchased and received at its Florida locations, goods and materials valued in excess of \$50,000 directly from points outside the State of Florida.

<sup>3</sup> The Petitioner is currently in trusteeship under the stewardship of the International Union.

<sup>4</sup> The parties do not have a prior bargaining history.

Gamble, and Assistant Food Manager Jimmy Todd. Reporting to Gamble and Todd are, among others, Division 24 Manager Ted Connelly, Produce Manager (Division 25) Don Grant, and Bakery Manager (Division 27) Ron Rawley.

Prior to January 2000, the meat and seafood departments were managed together, with the deli and bakery departments separately supervised. In January 2000, the Employer completed implementation of a plan, first announced in September 1999, that placed the deli department under the same department management as the meat/seafood departments. The deli and meat departments remain separate cost centers. Store Manager Smith testified that consolidation of the buying process was a primary reason for the change.

The Employer's food product departments are located in one general area of the store. The bakery department is located next to an entrance on the grocery side of the store. The produce department is adjacent to the bakery department. Curving along the store wall is the seafood department which consists of a seafood freezer containing frozen packaged seafood and a display case which contains fresh fish and fresh cut Angus beef. A service counter located behind the display case contains two scales and a table top wrapper. In front of the seafood service counter are items from the dry grocery department such as sauces. These items, known as "tie-ins," are used for cross-marketing purposes and are maintained and stocked by the grocery department.

The meat market is located next to the seafood department. The meat market sells a variety of meat products that arrive at the store already processed such as ground beef, ground turkey, and whole/cut up chickens. The store also receives boxed beef and pork of various weights and sizes that are handled by the meat cutters and meat sales associates. A door marked "authorized associates" leads into the meat preparation area and separates the fish and meat

departments. Next to the door is a bell that customers use when they need assistance from meat associates. The bell rings in the cutting room and a meat associate then exits through the door to help customers.

Behind the door, running behind the back wall, are the cutting room, deep freezer, meat cooler, and zero degree freezer. The deep freezer mainly stores ice cream, but, also contains some seafood, deli, and meat products. The meat cooler primarily stores meat and deli wall items. The zero degree freezer stores frozen foods such as entrees and potatoes, as well as some meat, deli, and deli wall (“97 wall”) items. Two wrapping machines are located in the cutting room. Employees from the respective departments come to the coolers and freezers to get products for their departments.

Along the wall, in front of the meat prep area, reaching back toward the seafood department, are meat cases for prepackaged poultry, as well as fresh meat and pork products. Glass behind the meat cases divides them from the meat preparation area. Further along the wall, adjoining the fresh meat cases, are cases that comprise the deli wall. Those cases contain prepackaged lunch meats, frankfurters, bacon, sausage, and cheese products. Along the wall are also some dairy products stocked and maintained by the dairy department. In front of the meat, fish, and 97 wall cases are five bunkers containing frozen and prepackaged meat, chicken, and fish items. The end of the bunkers, endcaps, contain promotional or “tie-in” items stocked and maintained by the department(s) that carry those products. Facing forward, in front of the bunkers, are rows of shelves containing groceries. Those shelves run perpendicular to the refrigerated display counters that run along the back wall.

The deli department and back wall are separated by a fire exit and hallway. The deli area is comprised of a deli prep area, deli service cases, which contain deli meats and cheeses, and a

deli service counter. At the far end of the deli service counter are hot cases which contain ready to eat chicken products and potatoes prepared by the deli department. Across from the deli service area on the sales floor are island bunkers used to display promotional items from the deli and dairy departments such as specialty cheeses, potato salads, crab salads, and dinner items. Those items are stocked and maintained by the department(s) that carry the products.

From a sales revenue standpoint approximately 62 percent of Division 24's revenue comes from the meat department and 29 percent of the division's total revenue comes from boxed meat. Approximately 6 percent of the division's revenue comes from the fish department, 13 percent from the deli department, and 19 percent from the 97 wall.

Division 24 Manager Connelly works from 4:00 or 5:00 a.m. until 4:00 or 5:00 p.m. Connelly has responsibility for the supervision, training, and daily management of the meat, seafood, and deli employees. He also assists in ordering food products, oversees product inventory, handles price change and advertisement paper work for the department. He spends approximately two hours per day in the cutting room, overseeing and monitoring the cutting. At times, Connelly works with a meat processor on a one-to-one basis. The record reflects that Connelly spends more time with less experienced meat processors, but as they acquire more experience, leaves remaining training to the more senior meat processors.

Reporting to Connelly from the meat, seafood, and deli areas, are a lead associate for the meat/seafood/97 wall departments and a lead associate from the deli department, 13 meat associates, 3 seafood associates, 10 deli associates, and 2 associates from the 97 wall. The 13 meat associates include 10 meat processors and 3 sales associates.

The meat sales associates generally work from 6:00 a.m. to 3:00 p.m. Two of the sales associates spend approximately six hours per-day wrapping, labeling, and pricing meat cut by

the processors. One of the those sales associates testified that she spends 75 percent of her time wrapping meat. When not wrapping meat, the record evidence shows that the two sales associates do markdowns, stock the meat cases, and help to clean up. They do not cut meat, nor do the processors wrap meat.

To wrap meat, the sales associates place cut meat on the wrapping machine and then punch in a code for the type of meat. The machine then wraps, labels, and prices the meat. A book contains codes for the different types of meat, but the record evidence shows that the two meat sales associates have memorized the codes and rarely consult the code book. Except for the meat processors, there is no record evidence that any other store associates have that familiarity with the meat products.

A sales associate who recently transferred to the meat department, Russ Romaine, does not wrap or cut meat. Department Manager Connelly classifies Romaine as a “two-to-one” associate.<sup>5</sup> Romaine started with the Employer unloading general merchandise trucks. He then became a stocker, taking general merchandise unloaded from the trucks and placing it on the sales floor. Thereafter, he transferred to the 97 wall. Toward the end of 1999, he transferred into the meat department. Romaine primarily stocks frozen foods from the meat department, and approximately once per week assists the seafood and 97 wall departments. One meat processor testified that he has observed Romaine passing through the meat department, but had never

---

<sup>5</sup> The record does not include an explanation of what is meant by a “two-to-one” associate.

observed him wrapping meat. Another meat processor testified that on rare occasions he observed Romaine in the cutting room weighing boxes.

Meat processors are responsible for cutting boxed meat, assisting in the stocking of meat cases, and upon request, assisting customers in the meat market sales area. The full-time meat processors work approximately 40 hours per week in shifts that range from 7:00 a.m. to 4:00 p.m., 9:00 a.m. to 6:00 p.m., and 12:00 noon to 9:00 p.m. The record reflects that the meat processors cut meat to the Employer's trim standards. To obtain the most efficient cut of meat the meat processors need to know the proper angles for cutting and trimming the meat. The processors prepare the meat in a way that is appealing and marketable to customers. Cutting mistakes lead to wasted meat.

On a daily basis meat processors are asked by customers to cut up whole chickens and to slice hams. During holidays, such as Thanksgiving, Christmas, New Year's, and Easter, meat processors make custom cuts of hams and other meats, and prepare pork crown rib roasts. The record reflects that cutting a crown roast is the most difficult cut for the meat processors. All of the meat processors, as well as Department Manager Connelly, help to dispose of the boxes that contained the boxed meat. The record also reflects that the meat processors and meat sales associates sometimes further process the meat with a cuber/tenderizer.

The record shows that on a typical day the first meat processor present inspects the meat cases. If needed, he cuts meat to restock the cases. The record further reflects that Department Manager Connelly, or leadman Searcy, with Connelly's approval, prepares a cut list which notifies the meat processors of the amount and type of meat to cut for the rest of the day. The cut list contains approximately 180 labeled meat sub-cuts based on 23 general categories,

including chuck rolls, cube steaks, pork loins, boneless rounds, pork butts, offals, top sirloins, and bone in chuck.

Pursuant to the cutting list, the meat processors remove the proper portions from the respective boxes of meat and pork. They then slice, cut, and trim the meat. Thereafter, the meat wrappers package and label the meat. The meat wrappers or meat processors then place the meat in the fresh meat cases located on the sales floor. One of the meat processors cuts Angus beef, which takes approximately 30 minutes per day, and then brings it to the seafood department.

Six of the more senior meat processors cut meat for at least six hours per day. One of those processors testified that he typically spends 90 percent of his time cutting meat. When not cutting meat, the meat processors take meat out of the meat cooler and prepare it for cutting. They may also help clean up and stock the cases. The record reflects that another of the more experienced cutters cuts meat for five hours a day, maintaining the meat cases in the afternoon.

One of the processors who cuts meat for six hours per day works three ten hour days as an accommodation for a family illness. Some days he cuts meat for his entire shift. Most days he first stacks goods from incoming trucks that come from the Employer's warehouse.<sup>6</sup> This meat processor places the products in the appropriate storage freezers or drops them off in the appropriate sales floor area where the products are then stocked by associates from those departments. The record reflects that this meat associate generally does not stock any other departments.

Three less experienced meat processors cut meat for up to four hours per day. The record reflects that these meat processors still need more training. To ensure that they receive proper

---

<sup>6</sup> Approximately 65 percent of the truck pallets contain products for the meat department as well as products for other departments within Division 24.



training the record reflects that Department Manager Connelly rotates their schedules to ensure that that at least one of the three is present in the morning and early afternoon when cutting takes

place. When not cutting, the three meat processors clean meat cases, meatcutting machines, and meatcutting tools. They also do some stocking of the meat cases. Cleaning the meatcutting equipment requires the meat associates to take the equipment apart.

Tools used by meat processors to process the boxed meat include 6 inch and 10 inch knives, bandsaws, tenderizers, and grinders. The record shows that the associates in the deli, seafood, and bakery departments use some of the same type of knives used by the meat processors when handling food products in their respective departments. The knives in the meat department have black handles, while those in the seafood department are white. The record further reflects that store employees in other departments do not use any specialized cutting tools or any of the bandsaw, tenderizer and grinder equipment located in the meat department.

The seafood department is staffed between approximately 7:00 a.m. and 10:00 p.m. Seafood associates are primarily responsible for preparing seafood for display cases, stocking the cases, serving customers, and cleaning the seafood service counter. The associates use steamers to steam lobster, shrimp, and other seafood for customers. They do not work in the cutting room or use meat department tools and equipment. They use scales similar to those used in the meat and deli departments to weigh, label, and price the seafood.

The deli associates staff the deli department from approximately 5:00 a.m. to 11:00 p.m. They assist customers, slice deli meat, use scales to verify weight and price, and cook chickens. The deli sales associates use commercial fryers and roasters located in an area adjacent to the deli service area. The meat department employees do not operate that equipment. The deli counter is staffed during daylight hours. The 97 wall associates stock the wall area. In doing so, they retrieve prepackaged meat and seafood from coolers and freezers and place the products in display cases and bunkers.

The record reflects that meat processors receive between \$7.60 and \$11.25 per hour. The seven, more experienced meat processors earn between \$9 and \$11.25 per hour, averaging \$9.89 per hour. The three less experienced cutters earn between \$7.35 and \$8.82 per hour, averaging \$7.92 per hour. The two meat associates who wrap meat receive between \$6.83 and \$8.01 per hour, averaging \$7.42 per hour. The average salary for all Department 93 employees, including lead associate Ted Searcy, who makes \$12.58 per hour, and meat associate Romaine, who makes \$6.65 per hour, is \$9.07 per hour.

The record further reflects that seafood associates earn between \$7.17 and \$8.60 per hour, averaging \$8.09 per hour. The record also reflects that the wages for 97 wall associates range from \$6.87 to \$7.01 per hour, averaging \$6.94 per hour. The wages for deli associates range from \$6.24 per hour to \$7.16 per hour, with the lead associate making \$7.72 per hour. Excluding the lead associate, the average wage for the deli associates is \$6.61, and including the lead associate the average wage is \$6.71. The record reflects that the highest paid hourly associate located outside of the meat/seafood/deli department receives \$14.41 per hour, while the lowest paid hourly associate makes \$5.40 per hour.

The parties stipulated that the store's associates wear different colored work attire. Meat associates wear white coats, red baseball style caps, and red aprons. Deli associates wear black aprons and baseball caps, produce associates wear green aprons and caps, seafood associates wear blue aprons and baseball caps, and 97 wall associates wear blue smocks and baseball caps.

All store associates attend daily store meetings when they are available to do so. The store meetings are held at different times and in different parts of the store each day. Attendees at these meetings participate in the Employer's cheer. All associates are also required to observe the Employer's "Ten Foot Attitude" rule. This rule requires all store associates to greet and

assist customers who come within 10 feet of them and escort them to the appropriate area for the product(s) they are seeking.

All store associates submit the same application and are subject to the same hiring process, which includes passing a drug test. The Employer does not require applicants for the meat/seafood/deli departments to have prior meat handling experience. However, Store Manager Smith testified that he looks for meat processors who have a meat cutting background. One meat processor testified that he was asked about his meat cutting experience during the interview.

Among the Employer's more senior processors the record reflects that three meat processors had over 14 years experience when hired, and that three others had between one and seven years prior experience. Several of those meat processors also had experience managing a meat market. Among the less senior meat cutters, the record reflects that one had seven years prior experience in the meat department of a grocery store where he cut some meat, and one had one month prior experience. Only one meat processor was hired without any formal experience. That meat processor had worked for five years as a cook.

The record establishes that one of the meat sales associates had 13 years prior experience, and a second associate had experience which was not listed on her job application. The third sales associate, Harold Romaine, had no prior wrapping experience. Among the three seafood associates, the record reflects that one had worked as a restaurant manager where she cut some meat, one had worked for eight years in a seafood store, and one had worked in a deli. Among deli department associates the record reflects that six associates, including the lead associate, had no prior experience working in a deli.

All new store associates go through the same general orientation process regarding the Employer's general policies and practices. All store associates are subject to the same rules and

policies that are contained in the Employer's associate handbook. All store associates receive training through the Employer's computer based learning system ("CBL"). The record shows that the CBL training modules do not provide meat associates with training regarding the different cuts of meat sold by the Employer or how to process and cut the boxed meat. The record reflects that much of the training for the meat processors is through on the job training and experience. The Employer's training manual requires a new meat processor to observe an experienced associate in cutting meats and handling the knives.

Division Manager Connelly testified that operating the meat wrapping machine requires no special skills, but he also testified that it takes approximately 45 days to train a meat wrapper. Connelly testified that it takes approximately nine months to train a meat processor with no prior experience to cut all types of meat. Connelly also testified, however, that the three less senior processors, two of whom have over one year's experience with the Employer, are still receiving training, and that they need to increase their speed. He further testified that one meat processor has only "o.k." cutting skills after three years of working for the Employer as a meat processor, and needs to improve his "package presentation." One meat processor testified that it took approximately two years of experience before he was proficient. Another meat processor with over a year's experience with the Employer testified that he is still not proficient with some cuts.

The CBL training module indicates that all meat department employees receive seafood training which provides an overview of the department. The meat processors have not undergone any computer training on the deli or 97 wall departments. The meat sales associates have taken computer sessions on the deli and seafood departments. The seafood, deli, and 97 wall departments have taken computer training sessions regarding each other's departments, learning about the products that they sell. Much of that training took place in March, 2000.

They have also taken the computer training sessions regarding the meat department, but the record reflects that the meat department overview is not sufficient to operate the meat equipment. The record further reflects that no one other than the meat processors and wrappers have operated the meat equipment.

The record does not reflect the existence of a job description for meat processors. A job description for meat/deli sales associates states that the meat/deli associates needed knowledge of ground beef policy and the ability to process meat. Division Manager Connelly testified, however, that that no deli or seafood associates needed to know such skills.

Regarding interchange between meat, deli, 97 wall, and seafood associates, the record reflects that the departments have separate scheduling. The record further reflects that on a daily basis meat processors take cut portions of Angus beef to the seafood department. Seafood associates bring back leftovers. When the Angus case needs restocking, a fish associate goes to the meat area and informs the meat processors of the need for more Angus beef. The record reflects that once a week, when the meat associates are busy, the seafood associate takes a piece of Angus beef back to the seafood department and further cuts the beef before displaying it. The record further reflects that a seafood associate may occasionally wrap meat,<sup>7</sup> and that one of the seafood associates is responsible for cleaning the front of all of the display cases.

The record reflects that during peak times the schedules for the seafood department associates overlap to ensure coverage during lunch and rest breaks. A sign in the seafood department directs customers to ring the bell in the meat department for assistance if no one is present at the fish counter. Connelly testified that one meat associate covers the fish counter for no more than 30 minutes per week. One meat associate testified that he has spent a “few

minutes” in the fish department and another meat associate testified that he has covered for seafood a few times during his two years of employment. When no customers are present the meat processors return to the cutting room. There is no record evidence that meat processors have ever used the fish department’s steamer, and the record reflects that none of the meat sales associates or processors clean, rearrange, or stock seafood.

Regarding additional interchange, the record reflects minimal interchange between meat associates and the deli department. A meat wrapper with previous deli experience has helped the department on a few occasions as a favor, and one meat processor worked once for approximately ten minutes in the deli. There is no other record evidence of any other processor or meat wrapper working in the deli. Evidence of interchange between the meat department employees and other departments is also sporadic. A couple of meat department employees have helped with the 97 wall when help was needed, and once or twice a month a meat department employee helps with frozen foods.

On Saturdays, the record reflects that one seafood associate helps for a few hours with the 97 wall, and that seafood associates also spend a few hours in the deli department. The record further reflects that neither deli nor 97 wall associates cut or wrap meat. The record does not reflect that associates from other departments have helped the seafood, meat, or deli departments. Nor does the record reflect that associates from those departments have helped associates in other store departments.

The record reflects that four associates have transferred into, or within, Division 24 over a one year time frame. One associate developed a repetitive motion problem after working in the deli for approximately 45 days. She transferred to the fish department for one day. Thereafter,

---

<sup>7</sup> The record does not further define “occasionally”. The record reflects that at one time the seafood department

the Employer learned that she had meat wrapping experience and transferred her to a meat sales position where she wraps meat. Russ Romaine transferred from the 97 wall to the meat department at the end of 1999. Both associates who stock the 97 wall transferred from other departments. One transferred from the deli department and one transferred from customer service.

All store associates are eligible to participate in the Employer's 401(k) plan, stock purchase plan, stakeholder bonus plan, and profit sharing plan. All store associates are also eligible for the same medical, disability, and life insurance benefit programs. All store associates use the same parking lot, store entrance, time clocks, lounge, and lockers. They receive their paychecks from the same store location. All store associates receive two 15-minute breaks and a one-hour lunch break.

All store associates receive annual performance evaluations from their area managers which are reviewed and approved by the co-manager store manager. The skills evaluated in the performance evaluations vary based on where the associates work, but the percentage of annual raise received by associates is based on the results of those evaluations in the same manner for all associates. Associates who "exceed" expectations receive a five percent raise, those who "meet" expectations receive a four percent raise. The actual duties reviewed by managers in each area are unique to the individual area of the store and evaluation forms reflect those differences. When associates are coached or commended for their performance it is reported to the personnel department.

Historically, the Board found that units comprised almost exclusively of meatcutters were presumptively appropriate because those employees "exercised a broad range of traditional

---

associate wrapped meat once per week. Apparently, the seafood associate now wraps meat less than once per week.



meatcutters skills marking them as craftspeople.” See, R-N Market, 190 NLRB 292 (1971); Big Y Foods, Inc., 238 NLRB 855 (1978). As boxed meat became more prevalent and meatcutters no longer handled carcass meat, the Board found that meatcutters no longer performed all of the higher skill level tasks associated with their craft status. Accordingly, the Board concluded that their skill level no longer warranted the presumption that a unit limited to meat department employees was appropriate. Ashcraft’s Market, 246 NLRB 471 (1979); Great Day, Inc., 248 NLRB 527 (1980). The Board, did not, however, adopt a presumption that meat department units were inappropriate. Rather, the Board ruled that it would apply a traditional community of interest analysis to determine the appropriateness of a separate meat department unit. Wal-Mart Stores, Inc., 328 NLRB No. 126 (1999); Scolari’s Warehouse Markets, Inc., 319 NLRB 153, 158 (1995).

In determining whether a petitioned-for unit of meat department employees constitutes an appropriate separate unit, the Board applies a community of interest test. Specifically, the Board examines factors such as 1) the portion of the employer’s meat department business involving boxed meat; 2) the level of specialized meatcutting skills required to process the boxed meat; 3) the level of training of meatcutters; 4) the portion of the unit engaged in skilled meatcutting work; 5) separate supervision; 6) the degree of interchange and transfer between the meat department and the rest of the store; and 7) the wages and benefits paid to the meat department employees. Scolari’s Warehouse Markets, Inc., 319 NLRB 153, 158 (1995); Super K-Mart Center, 323 NLRB 582, 586 (1997), enforced, 174 F.3d 834 (7th Cir. 1999).

None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit. Further, the Act allows a union to petition for an appropriate

unit, and does not require it to seek the most appropriate unit, even if a different unit might be more appropriate. Morand Bros. Beverage Co., 91 NLRB 409 (1950), enforced, 190 F.2d 576 (7th Cir. 1951); Daylight Grocery Co., Inc., 256 NLRB 881 (1981), enforced, 678 F.2d 905 (11th Cir. 1982). Upon consideration of all these factors and the entire record, I find that the meat department employees, including the meat processors and two meat sales associates who wrap meat have a community of interest separate from those of other store employees and constitute an appropriate unit.

In the first place, the record reflects that from a sales revenue standpoint approximately 62 percent of Division 24's revenues comes from the meat department and that 29 percent of the division's revenues come from boxed meat. Since Division's 24's revenues include boxed and unboxed meat from the meat department, deli, 97 wall, and fish, the percentage of meat sales alone which comes from boxed meat is more than 29 percent, and would reach a figure comparable to those percentages of boxed meat sales found to be a substantial portion of an employer's meat business in Scolari's Warehouse Markets, Inc., 319 NLRB at 157, and Super K-Mart Center, 323 NLRB at 587. Equally important, the record evidence shows that the meat processors spend a significant part of their day cutting boxed meat and preparing it for sale to customers, particularly when compared to the time meat processors spend meatcutting at other stores of the Employer. See, e.g., Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 2. Moreover, when the more junior meat cutters are not cutting meat they are intricately involved in the meat cutting process, spending their time cleaning the equipment and stocking meat.

The Employer's meat processors, as in Scolari's, primarily handle boxed meats. Thus, they are not involved in some of the traditional meatcutting skills. The record evidence reveals, however, that they still exercise skills that are distinct from the skills of other store employees.

The evidence reveals that meat processors use their knives and meatcutting equipment to create the optimum number of cuts from the different types of meat. The record evidence shows that meat processors use various angles when cutting the meat and must determine what pieces can be carved and derived from a particular piece of meat. Mistakes in cutting can lead to wasted meat. The evidence also establishes that meat processors must determine what cuts are physically appealing to customers. Significantly, no other store associates use the saws used by the meatcutters. In these circumstances, the evidence clearly demonstrates that meat processors exercise “skills which are distinct from the skills” of other store employees and utilize equipment unique to the meat department. Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 4; Scolari’s Warehouse Markets, Inc., 323 NLRB at 587; Super K-Mart Center, 319 NLRB at 156.

Moreover, as shown above, primarily during holidays, meat processors prepare custom cut meat pursuant to special orders made by customers. Such custom meatcutting can include preparing crown roasts, cutting meat to requested thickness, or carving hams. The special skill required to make specialty cuts provides persuasive evidence that the meat processors regularly exercise specialized meatcutting skills.

The record establishes that approximately 83 percent of the petitioned-for unit are meat processors. This percentage reflects that a substantial portion of the unit engages in skilled meatcutting work. Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 4. Record evidence, as shown above, also indicates that meat processors have a high level of training and skill. Indeed, all but one of the meat processors had prior experience. Those with limited experience have undergone extensive learning, needing at least one year’s experience to become proficient. There is no record evidence that employees in other departments or divisions undergo such lengthy training in order to work in their departments. The record is also void of any evidence

that the Employer provides any meatcutting or meat wrapping training to other store employees regarding meat market operations.

Regarding employee interaction, the record reflects occasional and sporadic interchange between the meat department employees and the rest of Division 24. The record reflects that the meat processors and meat sales associates work in a distinct area of the store. The record further reflects that for part of his shift one meat processor generally unloads, stores, and, at times, distributes products to the different departments within Division 24. The record also reflects that meat market employees have some interaction with seafood department employees in the handling of Angus beef, and provide coverage for that department when needed. The record reveals, however, and the Employer does not dispute, that meat department employees spend the majority of their time in the meat market performing meatcutting activities, and that seafood department employees spend the majority of their time in the seafood work areas. The interaction between these two groups of employees does not outweigh the fact that they spend the majority of their daily activities working apart from each other.

The record further reflects that interaction between the meat department and other departments in Division 24 is limited to occasional helping out. Finally, the record reflects that store employees interact on a limited basis at general store meetings, in the employee lounge, or at the employee time clocks. While the foregoing demonstrates interaction between meat market employees and other store employees, that occasional contact does not diminish the department's distinct community of interest. Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 5; Super K-Mart Center, 323 NLRB at 588.

The record evidence also establishes a limited number of permanent transfers associated with the meat market. None of the meat processors have transferred from another department.

One of the meat sales associates with prior meat wrapping experience transferred from within Division 24 after developing work related medical problems. Another sales associate recently transferred from the 97 wall, but does not perform any meat wrapping duties. Aside from these transfers, the lack of significant permanent transfers emphasizes the lack of community of interest between meat market employees and other store employees. Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 4; Super K-Mart Center, 323 NLRB at 588.

Although the record reveals that all employees are eligible for similar bonuses and benefits, the record shows that meat processors are generally paid at a rate higher than the wage rates paid by the Employer to sales associates throughout the store and particularly to those within Division 24. The Board has found such a disparity in wages between meatcutters and other store employees a significant factor establishing the meatcutters' separate community of interest. Wal-Mart Stores, Inc., 328 NLRB No. 126, slip op. at 4; Super K-Mart Center, 323 NLRB at 588.

Finally, the foregoing evidence demonstrates that any unit found appropriate should include the two meat sales associates who wrap meat and perform some cleaning duties. After the meat processors complete their job the meat is not ready for presentation to the retail customer. The meat sales associates then take over, wrapping, weighing, and pricing the meat for display in the retail cases. In carrying out this function, the meat sales associates need basic knowledge of the meat to properly identify and label it. Significantly, the record reflects that the two sales associates spend a significant portion of their day in the cutting room wrapping meat. Based on their day to day work duties, the record shows that these two employees are fully and functionally integrated with the meat processors in the operation of the meat market. Super K-Mart Center, 323 NLRB at 588. Specifically, the meat sales associates "take the flow of work

from the meatcutters” and perform supporting and ancillary functions to meat processors in making the product available to the customers. Id. at 588.

The Employer argues in its brief that the Petitioner is trying to improperly “gerrymander” collective-bargaining units and that the “presumed” appropriate unit includes all store associates , or, at minimum, all Division 24 associates. That argument is misplaced. In the first place, there is no “presumption” favoring either of the units proposed by the Employer. More importantly, the Board is not charged with determining the most appropriate unit, or required to engage in a comparative analysis of the relative appropriateness of various potentially appropriate units. The issue is not whether another unit is more appropriate, but whether the selected unit is inappropriate. In these circumstances, it is not determinative that the common benefits and bonuses among all store employees or the common supervision of the meat market and deli employees might form the basis for finding a broader unit appropriate, if sought. K Mart Corporation v. NLRB, 174 F.3d 834, 841 (7th Cir. 1999), enforcing, 323 NLRB 582 (1997); Executive Resource Associates, Inc., 301 NLRB 400, 402 (1991); Omni-Dunfey Hotels, Inc., *supra*.

Based on the above and the record as a whole, I find that the petitioned-for unit of meat processors and meat sales associates who wrap meat is appropriate. Although the evidence reflects there is general interaction among employees at the Employer’s store and that employees share common benefits and bonuses and, in some instances, common immediate supervision, these considerations do not outweigh the other factors such as the substantial time meat department employees spend in handling and cutting meat or the unique and special skills they

exercise when performing these job duties. Accordingly, I find that a unit limited to meat department employees is appropriate.<sup>8</sup>

The Petitioner asserts that the lead meat associate is a supervisor. The burden of proof of supervisory status rests with the party asserting that a given position is supervisory. Allen Services Co., 314 NLRB 1060, 1061 (1994). It is sufficient to establish that the position exercises any one of the indicia of supervisory authority listed in Section 2(11) of the Act. Id. The position of lead meat associate is currently held by Terry Searcey, who has approximately 20 years of meatcutting experience. Searcey replaced Ted Connelly when Connelly became the Division 24 manager. The record reflects that Searcey does not cut meat on a daily basis, but does cut meat when needed.<sup>9</sup> On those days, Searcey cuts meat for approximately four hours. Store Manager Smith testified that during the two days per week that Department Manager Connelly is off, or at any other times Connelly is not present, the lead meat associate “supervises” the department, telling employees what to do, and prioritizing their work. Several meat associates testified that Connelly told them that Searcey was his assistant and that they should take direction from Searcey when he is not present. The Petitioner, however, has offered no evidence of the lead meat associate assigning work to employees or providing them with direction. To the contrary, the record reflects that when a meat wrapper had a work and staffing question for Searcey, the issue was resolved the next day in a meeting between Connelly, Searcey, and the meat wrapper. In any event, to the extent that the lead meat associate prioritizes work, such a task falls far short of establishing that the lead meat associate responsibly directs

---

<sup>8</sup> The decision here, finding that meat processors and meat sales associates form an appropriate unit, is consistent with the Decision and Direction of Election issued on January 26, 2000, in Wal-Mart Stores, Inc., Case No. 16-RC-10168, and in which the Board denied review on February 1, 2000.

<sup>9</sup> The record does not specifically reflect how often the lead meat associate cuts meat.

employees under Section 2(11). See Cooper/T. Smith, Inc. v. NLRB, 177 F.3d 1259, 1264-1267 (11th Cir. 1997), enforcing, 325 NLRB No. 28 (1997).

Store Manager Smith also testified that it would not be inappropriate for the lead meat associate to make recommendations regarding a disciplinary problem, but, the record is void of any evidence that the lead meat associate has ever made such a recommendation. To the contrary, when one employee complained to Searcey about another meat associate's language, Searcey simply reported the incident to management. There is no evidence that he had any role in the Employer's handling of the incident. Similarly, when Connelly served as the lead associate he simply reported an incident regarding poor work performance to management. Connelly was instructed to take pictures that documented the problem, but there is no evidence that he had any role in the Employer's subsequent handling of the incident.

In sum, there is no evidence that the lead meat associate hires, transfers, suspends, lays off, recalls, promotes, discharges, assigns, rewards, or disciplines employees, responsibly directs them, adjusts their grievances, or effectively recommends such actions. In these circumstances, testimony that meat associates view Searcey as being in charge, that he wears a badge that says meat assistant, earns more money than the other meat associates, and receives training not received by other associates, such as team building, delegating, and diversity training, does not confer supervisory status on the lead meat associate position. It is well settled that secondary indicia of supervisory status cannot transform an individual without any of the powers enumerated in Section 2(11) into a statutory supervisor. Northcrest Nursing Home, 313 NLRB 491, 500, 508-09 (1993); Monetech of Mississippi v. NLRB, 876 F.2d 514, 517 (5th Cir. 1989), enforcing, 290 NLRB 942 (1988).



The Petitioner would exclude employee Romaine, the “two-to-one” associate. Romaine does not cut meat. Nor does he wrap any meat, and there is no evidence that the Employer plans to have Romaine wrap meat in the future. In addition, the record reflects that he spends virtually no time in the meat preparation area where the meat processors and two meat associates who wrap meat spend most of their time. As I find the record inadequate to determine whether or not Romaine should be included in the unit found appropriate herein, he may vote subject to challenge.

Accordingly, based on the foregoing, and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time meat department employees<sup>10</sup> employed at the Employer’s store located at 4980 NE Silver Springs Boulevard, Ocala, Florida including meat processors, meat sales associates, and the lead meat associate; excluding the meat market manager, office clerical employees, all deli, seafood, and 97 wall associates, guards, and supervisors within the meaning of the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit determined appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

---

<sup>10</sup> As stated above, Russ Romaine the sales associate who does not wrap meat may vote subject to challenge.

such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>11</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Food and Commercial Workers International Union, Local 1625.

DATED at Tampa, Florida, this 27<sup>th</sup> day of April 2000.<sup>12</sup>

---

Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 East Kennedy Boulevard, Suite 530  
Tampa, FL 33602

440-1760-9167-4833

---

<sup>11</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that two (2) copies of an alphabetized election eligibility list containing the full names and addresses of all eligible voters in the unit found appropriate, shall be filed by the Employer with the Regional Director for Region 12 within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office on or before May 4, 2000. No extension of time to this provide this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing such list.

<sup>12</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 11, 2000.